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13 | *Attorneys for Defendant Twitter, Inc.*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

18 BEVERLY NUNES, individually and on behalf ) CASE NO.: 14-cv-02843-VC  
19 of a class of similarly situated individuals, )  
20 Plaintiff, ) **STIPULATION AND [PROPOSED]**  
21 v. ) **ORDER CONTINUING STAY OF**  
22 TWITTER, INC., ) **PROCEEDINGS AND MODIFYING**  
23 ) **CASE SCHEDULE**  
24 Defendant. )  
 )  
 )

STIPULATION AND [PROPOSED]  
ORDER CONTINUING STAY  
CASE No.: 14-CV-02843-VC

1 Plaintiff Beverly Nunes (“Plaintiff”) and Defendant Twitter, Inc. (“Twitter”) (collective-  
2 ly, “the Parties”) have met and conferred on the status of the above-captioned matter, and have  
3 jointly agreed to request a further three-month stay of proceedings in this matter through Sep-  
4 tember 3, 2015, along with corresponding extensions to the existing discovery and summary  
5 judgment briefing schedule.

6 In support of their stipulated request, the Parties state as follows:

7 1. On March 5, 2015, pursuant to stipulation of the Parties, the Court entered a  
8 three-month stay of all proceedings in this matter and modified discovery and summary judg-  
9 ment deadlines accordingly. The stay is currently scheduled to end on June 2, 2015.

10 2. On May 28, 2015, the Parties met and conferred through their respective counsel  
11 regarding a potential stipulation to extend the stay in this case.

12 3. Twitter believes the stay should be extended because issues presented in three  
13 proceedings currently pending before the Ninth Circuit Court of Appeals, the U.S. Supreme  
14 Court, and the Federal Communications Commission (FCC) directly bear upon issues to be ad-  
15 dressed by the Court in this action and may control this case. Specifically, in *Marks v. Crunch*  
16 *San Diego, LLC*, No. 14-56834 (9th Cir. appeal filed Nov. 21, 2014), the Ninth Circuit will ad-  
17 dress what is the proper definition of an “automatic telephone dialing system” under the TCPA.  
18 In *Spokeo Inc. v. Robins*, No. 13-1339 (certiorari granted April 27, 2015), the U.S. Supreme  
19 Court will resolve a circuit split on the question of whether a plaintiff alleging a statutory viola-  
20 tion must show actual injury to demonstrate Article III standing. Oral argument in *Spokeo* is  
21 scheduled for the October 2015 term. Finally, there are currently five petitions pending before  
22 the FCC seeking rulings (i) clarifying that “prior express consent of the called party” for purpos-  
23 es of the TCPA means consent of the intended recipient of the call, and/or (ii) establishing a safe  
24 harbor so that businesses who make good faith efforts to comply with the TCPA cannot be held  
25 liable just because a wireless number has been reassigned. FCC Chairman Tom Wheeler an-  
26 nounced on May 27, 2015 that he has circulated a proposal to address these and other TCPA-  
27 related petitions, which will be voted on by the full Commission on June 18, 2015.

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1           4. Plaintiff agrees that the stay in this case should be continued through September  
2           3, 2015 in light of the FCC's imminent action on the recycled numbers and other TCPA-related  
3           petitions, but disagrees that the case should be stayed pending resolution of the *Marks* and  
4           *Spokeo* proceedings. Nevertheless, Plaintiff agrees that during the pendency of the continued  
5           stay, Twitter may move to further extend the stay beyond September 3, 2015.

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7           THE PARTIES THEREFORE STIPULATE through their undersigned counsel, subject  
8           to the Court's approval, that:

9           1. The stay of all proceedings in this matter should be continued through September  
10           3, 2015.

11           2. The existing case schedule should be modified as follows: Phase I Discovery shall  
12           be completed by December 30, 2015; Initial Expert Witness statements shall be submitted by  
13           January 15, 2015; Rebuttal Expert Witness statements shall be submitted by January 29, 2016;  
14           Motions for Summary Judgment on Phase 1 to be heard on May 19, 2016 10:00 a.m.

15           3. If Twitter wishes to seek further extension of the stay past September 3, 2015, it  
16           may file a motion seeking such relief during the pendency of the stay. Any motion by Twitter to  
17           further continue the stay shall be due by July 8, 2015; any opposition by Plaintiff shall be due by  
18           July 29, 2015; Twitter's reply shall be due by August 5, 2015; and the matter will be set for hear-  
19           ing on a date on or after August 21, 2015, to be determined by the Court.

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1 DATE: May 29, 2015

/s/ David H. Kramer

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2 David H. Kramer  
3 WILSON SONSINI GOODRICH & ROSATI

4 *Attorney for Defendant Twitter, Inc.*

5 DATE: May 29, 2015

/s/ John G. Jacobs

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6 John G. Jacobs (*PRO HAC VICE*)  
7 JACOBS KOLTON, CHTD  
8 Jeffrey F. Keller  
KELLER GROVER, LLP

9 *Attorneys for Plaintiff Beverly Nunes*

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1 PURSUANT TO STIPULATION, AND GOOD CAUSE APPEARING, IT IS HEREBY  
2 ORDERED THAT:

3 1. The stay of all proceedings in this matter are continued through September 3,  
4 2015.

5 2. The existing case schedule is modified as follows: Phase I Discovery shall be  
6 completed by December 30, 2015; Initial Expert Witness statements shall be submitted by Janu-  
7 ary 15, 2015; Rebuttal Expert Witness statements shall be submitted by January 29, 2016; Mo-  
8 tions for Summary Judgment on Phase 1 to be heard on May 19, 2016 10:00 a.m.

9 3. If Twitter wishes to seek further extension of the stay past September 3, 2015, it  
10 may file a motion seeking such relief during the pendency of the stay. Any motion by Twitter to  
11 further continue the stay shall be due by July 8, 2015; any opposition by Plaintiff shall be due by  
12 July 29, 2015; Twitter's reply shall be due by August 5, 2015; and the matter will be set for hear-  
13 ing on a date on or after August 21, 2015, to be determined by the Court.

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15 SIGNED this \_\_\_\_ day of June, 2015.

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18 VINCE CHHABRIA  
19 UNITED STATES DISTRICT JUDGE  
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## **CERTIFICATION**

I, David H. Kramer, am the ECF User whose identification and password are being used to file this **STIPULATION AND [PROPOSED] ORDER CONTINUING STAY OF PROCEEDINGS AND MODIFYING CASE SCHEDULE**. In compliance with Civil Local Rule 5-1(i), I hereby attest that John G. Jacobs has concurred in this filing.

DATE: May 29, 2015

/s/ David H. Kramer

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